

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Katherine White	Team: Squad #5	CCRB Case #: 201910663	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 07/29/2019 11:09 PM	Location of Incident: § 87(2)(b)	Precinct: 50	18 Mo. SOL 1/29/2021	EO SOL 9/15/2021	
Date/Time CV Reported Wed, 11/27/2019 7:30 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Wed, 12/11/2019 4:00 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. SGT Joseph Carolan	04027	953730	050 PCT
2. Officers			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Jorge Felizdelrosario	23897	967062	REC TNG
2. POM Rohan Lumsden	2014	949232	050 PCT
3. POM Terry Myers	05750	966733	050 PCT
4. DI Christophe Ikone	00000	913772	PBBX
5. CPT Robert Mortensen	00000	935357	PBBX
6. POM Justin Hoff	24506	953969	ESS 04
7. DTS Robert Travis	3106	949741	ESS 04
8. DTS John Nodalny	04268	937193	ESS 04
9. DTS Dennis Osullivan	04269	939133	ESS 04
10. POM Steven Wan	12945	951419	ESS 04
11. POM Luis Torres	19168	943885	DBBX
12. DTS Dominick McDonagh		922740	ESS 04

Officer(s)	Allegation	Investigator Recommendation
A. Officers	Abuse: Officers damaged § 87(2)(b)'s property.	§ 87(2)(b)
B. Officers	Abuse: Officers entered § 87(2)(b) in the Bronx.	§ 87(2)(b)
C. Officers	Abuse: Officers searched § 87(2)(b) in the Bronx.	§ 87(2)(b)
D.SGT Joseph Carolan	Abuse: Sergeant Joseph Carolan searched § 87(2)(b) in the Bronx.	§ 87(2)(b)

## Case Summary

On November 27, 2019, § 87(2)(b) reported this complaint during an interview for CCRB case #§ 87(2)(b) § 87(2)(b) filed the complaint four months after the date of the incident.

On July 29, 2019, § 87(2)(b) had an argument with his father, § 87(2)(b) at his father's home. The dispute became physical, and § 87(2)(b) left. His father called 911 (**BR01**) and reported that his son had attacked him and had a "mental history," was a veteran, was off his medication, and was home alone at his apartment, located at § 87(2)(b) in the Bronx. § 87(2)(b) was not, in fact, inside his residence, and was not present for any of portion of the incident. Police Officers Jorge Feliz del Rosario, Rohan Lumsden, Luis Torres, Terry Myers, and Sergeant Joseph Carolan, all of the 50<sup>th</sup> Precinct, met § 87(2)(b)'s father outside the location. The officers unsuccessfully attempted to contact § 87(2)(b) through the door of his apartment, so Sgt. Carolan requested a response from ESU. Police Officers Justin Hoff and Steven Wan, and Detectives Robert Travis, John Nodalny, Dominick McDonagh, Dennis O'Sullivan, Derrick Moyer, and Robert Goldstein, all assigned to ESU Squad 4, responded to the location, along with two additional unidentified ESU officers. Deputy Inspector Christopher Ikone, the Patrol Borough Bronx Duty Inspector that evening, also arrived on scene. Ultimately, some number of the ESU officers made forced entry into § 87(2)(b)'s apartment (**Allegations A-B: Abuse of Authority, § 87(2)(g)**). At some point, unidentified officers allegedly opened dresser drawers and searched through storage boxes inside the apartment (**Allegation C: Abuse of Authority, § 87(2)(g)**). Additional officers entered afterward, including Captain Robert Mortensen of Patrol Borough Bronx, and Sgt. Carolan searched a bag of clothing inside the apartment (**Allegation D: Abuse of Authority, § 87(2)(g)**).

The investigation obtained BWC footage from the 50<sup>th</sup> Precinct officers (**BR02-11**, summarized at **BR12**). At the time of the incident, DI Ikone, Capt. Mortensen, and all the ESU officers had not yet been issued BWCs. All references to video evidence below refer to the time stamp in the video player, and not to any onscreen clock embedded in the footage itself.

The investigation was hampered by issues related to the COVID-19 pandemic, including delays in officer interviews and delays in obtaining ESU records. It was also delayed by the ESU ICO incorrectly identifying various supervisory officers who were not, in fact, present during the incident.

DI Ikone has since been promoted to inspector and reassigned to the Support Services Bureau. Capt. Mortensen has been reassigned to Detective Borough Bronx.

## Findings and Recommendations

**Allegation (A) Abuse of Authority: Officers damaged § 87(2)(b)'s property.**  
**Allegation (B) Abuse of Authority: Officers entered § 87(2)(b) in the Bronx.**

In sum, the BWC footage from the 50<sup>th</sup> Precinct officers shows the following: PO Feliz del Rosario, PO Lumsden, and PO Torres arrived first, followed shortly after by Sgt. Carolan and PO Myers. A neighbor let Sgt. Carolan, PO Lumsden, PO Feliz del Rosario, and PO Myers into the building, and they knocked on § 87(2)(b)'s door for approximately fifteen minutes. Sgt. Carolan requested an ESU response for what he believed was a "barricaded EDP" situation—he believed § 87(2)(b) was emotionally disturbed and was failing to respond to the officers' attempts to speak to him. PO Hoff and Det. Travis arrived next, began performing the typical ESU procedures for such a situation, and continued knocking on the door in an attempt to contact § 87(2)(b). Additional

ESU officers joined PO Hoff and Det. Travis at the door, at which point all the 50<sup>th</sup> Precinct officers exited the building. Sgt. Carolan briefly re-entered the building several times to speak with ESU officers inside, but he remained outside for most of the duration of the incident. ESU officers continued arriving in pairs as the incident continued, and they moved between different positions inside the building and out on the sidewalk. DI Ikone arrived after most or all of the ESU officers were on scene, and he remained outside the building and spoke to Sgt. Carolan and § 87(2)(b)'s father. At this point, DI Ikone and Sgt. Carolan became aware over the radio that the ESU officers had made forced entry into the apartment and found that no one was inside.

The video footage makes clear that no officers from any commands other than ESU were inside the building at the time the ESU officers made entry. The footage also shows that neither DI Ikone nor any of the other officers waiting outside the building ever explicitly directed the ESU officers to make entry. The footage does not appear to show a supervisory ESU officer arriving on scene, but it does not provide a comprehensive record of the activities of the ESU officers during the incident.

Sgt. Carolan (**BR13**) and DI Ikone's (**BR14**) testimonies were largely consistent with the video footage, inasmuch as neither could recall who authorized the entry and both recounted that they were outside at the time. DI Ikone could not recall if an ESU supervisor was on scene. It should be noted that Sgt. Carolan was not interviewed until approximately 16 months after the incident, and DI Ikone was not interviewed until approximately 17 months after the incident.

The ESU officers were not interviewed until even longer after the incident. PO Hoff was the first to be interviewed, at approximately 19 months after the incident (**BR15**). He generally recalled that an ESU supervisor was present, but he could not recall the identity of the supervisor and could not recall if more than one such supervisor was present. He recalled hearing an ESU supervisor directing officers to make entry, but he was focused on the door at the time and did not actually see who voiced that directive.

Neither PO Wan (**BR17**), nor Det. Nodalny (**BR18**), nor Det. O'Sullivan (**BR19**) could recall whether an ESU supervisor was present during the incident, nor could they recall who made the decision to enter the apartment.

Det. Travis was not interviewed until approximately 23 months after the incident (**BR16**). He could not recall whether an ESU supervisor was present during the incident, nor could he recall if he was in contact with a supervisor over the radio or phone. He explained that an ESU Citywide Supervisor typically responds to incidents such as this one, but that such a supervisor has a broad geographic jurisdiction which may contain multiple simultaneous incidents, so the supervisor could also communicate by phone with ESU officers on scene. Det. Travis' recollection was that the ESU officers decided together to make entry into the apartment, but he could not recall exactly which officers did so, and crucially he could not recall whether an ESU supervisor was involved in that decision-making process.

Det. Travis reviewed the ESU report (**BR23**) he created for this incident, on which Sergeant Kevin O'Doherty of ESU Squad 4 was listed as the report's "reviewer officer." Det. Travis noted that, at the time of the incident, Sgt. O'Doherty was the overnight Citywide ESU Supervisor responsible for the geographic area in which the incident took place. As a result, Det. Travis thought Sgt. O'Doherty may have responded to the incident. However, Det. Travis also noted that he had not listed Sgt. O'Doherty's unit designation among the list of responding units on the report, and he had not checked the box indicating that the Citywide Supervisor was "at scene/notified." He also confirmed that the "reviewer officer" on the report does not necessarily have to have been personally involved in the incident.

Sgt. O'Doherty retired from the NYPD before the investigation began interviewing officers in this case. Det. Moyer, Det. Goldstein, and Det. McDonagh also left the NYPD before the investigation was able to obtain statements from them.

The ICAD history of the incident appeared to show that an ESU Citywide Supervisor did respond to the incident, as it contained a unit designation consistent with the type used by ESU for

such a supervisor (**BR01**). However, based upon the time stamps in the ICAD history and the BWC footage, this supervisor may not have arrived on scene until after the entry took place. The investigation cannot reach this conclusion with certainty, however, as BWC time stamps in general are not necessarily accurate, and as the time stamp in the ICAD history may not reflect the exact time that the supervisor arrived on scene.

The investigation also interviewed Sergeant William Meehan (**BR20**) and Lieutenant Joel Sussman (**BR21**) because they were also working as ESU Citywide Supervisors on the date of the incident. Both officers testified that they did not respond to the incident—Lt. Sussman was the supervisor for the correct geographic area but his tour ended prior to the incident, and Sgt. Meehan was the supervisor for a different geographic area. The investigation also interviewed Sergeant Constantino Barberis of ESU Squad 3 (**BR22**), and he confirmed that he did not respond to the incident. The investigation was unable to identify two additional ESU officers who responded, though it was clear from NYPD records that those officers also likely would not have been supervisors.

§ 87(2)(g)

§ 87(2)(g)

**Allegation (C) Abuse of Authority: Officers searched § 87(2)(b) in the Bronx.**

**Allegation (D) Abuse of Authority: Sergeant Joseph Carolan searched § 87(2)(b) in the Bronx.**

§ 87(2)(b) testified (**BR24**) that he returned to the apartment the following morning and noticed that his dresser drawers were open and that a number of storage boxes had been searched. He testified that the boxes “looked like they had been opened” and that he “could tell that somebody searched them.” He did not provide any further testimony to explain how he knew that officers had searched the boxes. He also recounted that furniture and other items had been moved, but he did not recount seeing anything to indicate that officers had searched anything other than the drawers and the boxes.

PO Hoff and Det. Travis testified that they quickly moved throughout the apartment to see if anyone was inside, and Det. Travis specified that he did not take any other actions while briefly inside the apartment. Det. O’Sullivan, Det. Nodalny, and PO Wan had no recollection of their actions inside the apartment, and Det. O’Sullivan and Det. Nodalny did not recall if they even entered the apartment.

As noted above, there was no BWC footage depicting the initial entry by ESU officers, nor of the process by which they moved through the apartment to determine if anyone was inside. Sgt. Carolan, DI Ikone, and other officers from the 50<sup>th</sup> Precinct entered the apartment after the ESU officers completed their initial search. Capt. Mortensen had arrived on scene by this time and also entered the apartment. The BWC footage from the 50<sup>th</sup> Precinct officers shows that the dresser drawers were already open when they reached the apartment. The footage does not depict those officers ever opening or searching through the storage boxes.

However, Sgt. Carolan's BWC footage (**BR09**, beginning at approximately 05:15) shows that he searched a duffle bag full of clothing and other items for approximately 30 seconds. He moved items within the bag, and removed some items, in order to gain access to items buried deeper in the bag.

Sgt. Carolan testified that the forced entry by ESU officers damaged the apartment door such that the apartment could have been vulnerable to burglary. He explained that, when officers make such a forced entry and find that the apartment is unoccupied, they are required by procedure to seize and voucher for safekeeping any valuable items, such as large amounts of jewelry or cash. Sgt. Carolan did not specify the source of this "procedure." Sgt. Carolan initially recounted that he and the other officers entered the apartment and did a "walk-through" to look for valuables "in the open," but did not search anything that was "not immediately visible." The officers did not locate any such valuables. After reviewing the BWC footage, Sgt. Carolan confirmed that he searched the bag to ensure it did not contain valuables. He characterized the search as only consisting of what was "on top" of the bag and noted that he did not "go through" or "empty out" the bag.

DI Ikone similarly testified that officers must voucher any valuables or contraband in plain sight when they breach a door and find the apartment unoccupied, as the rudimentary locks used by ESU to secure the apartment door are more vulnerable to burglary than typical door locks. Such valuables can include large amounts of cash, jewelry, and firearms. DI Ikone confirmed that officers only voucher valuables which are in plain sight. DI Ikone recounted that he walked through the apartment with other officers, and that he recalled seeing a lock box and a safe that were already open prior to officers' arrival. He testified that he was not aware of any officer conducting a more thorough search in the apartment, such as opening closed drawers or "going through" bags. After reviewing the BWC footage showing Sgt. Carolan searching the duffle bag, DI Ikone testified that he had not seen the search during the incident, and that he did not know why Sgt. Carolan searched the bag.

§ 87(2)(g)

People v Stanislaus-Blache, 93 A.D.3d 740 (BR25) states that officers may enter and search a residence without a warrant provided they have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property, and provided there is a reasonable basis to associate the emergency with the area or place to be searched.

§ 87(2)(g)

§ 87(2)(g)

[REDACTED]

**Civilian and Officer CCRB Histories**

- § 87(2)(b) has been party to three CCRB complaints and has been named as a victim in fourteen allegations (**BR26**):
  - § 87(2)(b) [REDACTED]
  - [REDACTED]
  - [REDACTED]
- Sergeant Joseph Carolan has been a member of the NYPD for eight years and has been a subject in two CCRB complaints and three allegations, none of which were substantiated. § 87(2)(g) [REDACTED]

**Mediation, Civil, and Criminal Histories**

- This complaint was not suitable for mediation.
- As of August 4, 2021, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards this to complaint (**BR27**).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)] [REDACTED]

Squad: 5



Investigator:

Signature

INV Katherine White

Print Title & Name

August 12, 2021

Date

Squad Leader: Daniel Giansante

Signature

IM Daniel Giansante

Print Title & Name

August 12, 2021

Date

Reviewer:

Signature

Print Title & Name

Date